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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Falcon Enterprises, Inc.

File: B-266366

Date: October 12, 1995

DECISION

Falcon Enterprises, Inc., a small, disadvantaged business, protests the Bureau of Land Management, Department of the Interior's rejection of its bid as nonresponsive under invitation for bids (IFB) No. N651-IFB5-2053, issued by the agency for concrete wall caps. The agency rejected Falcon's bid because Falcon's bid bond was not signed by the attorney-in-fact authorized by the power of attorney accompanying the bid bond to execute the bond on the surety's behalf.

We dismiss the protest.

Falcon protests that the rejection of its bid was improper, and that the issue of its bid's responsiveness should have been referred by the agency to the Small Business Administration (SBA) for consideration under the SBA's Certificate of Competency (COC) procedures.

Where, as here, an IFB requires the submission of a bid bond, the bid bond is a material part of the bid and must be furnished with it. The bid bond secures the surety's liability to the government, thereby providing funds to cover the excess costs of awarding to the next eligible bidder in the event the low bidder fails to execute the required contract documents and deliver the required bonds. Golden Reforestation, Inc., B-230169, Feb. 25, 1988, 88-1 CPD ¶196. Under the law of suretyship, no one incurs a liability to pay the debts or perform the duties of another unless that person expressly agrees to be bound. Environmental Management Servs., Inc., B-245508, Sept. 18, 1991, 91-2 CPD ¶261. The surety must give its express consent in the bond documents because suretyship law strongly suggests that a bond will be strictly construed in favor of the surety, and that liability will not be found by construction or implication. William V. Walsh Constr. Co., Inc., B-241257, Oct. 3, 1990, 90-2 CPD ¶270. The determinative question as to the acceptability of a bid bond is whether the bid documents establish that the bid bond is enforceable against the surety should the bidder fail to meet its obligations. Fred Winegar, B-243557, Aug. 1, 1991, 91-2 CPD ¶111.

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Here, because the attorney-in-fact authorized to execute the bond on the surety's behalf had not signed the bid bond, there was doubt as to the enforceability of the bid bond. William V. Walsh Constr. Co., Inc., supra; Henry Bldg. & Eng'g. Inc., B-239709, Sept. 17, 1990, 90-2 CPD ¶ 223; Golden Reforestation, Inc., B-230169, Feb. 25, 1988, 88-1 CPD ¶ 196. Therefore, the agency properly determined that Falcon's bid bond was materially defective, and rejected the bid as nonresponsive. Id.

The agency had no reason to forward the matter of the bid's responsiveness to the SBA because it is only in cases involving a small business firm's responsibility that the matter is referred to the SBA for consideration under its COC procedures. California Mobile Communications, B-223137, Aug. 20, 1986, 86-2 CPD ¶ 203; Mohawk Motor Inn and Mohawk Motor Inn Restaurant, B-214846, July 24, 1984, 84-2 CPD ¶ 104.

The protest is dismissed.

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